

REMARKS/ARGUMENTS

Claims 2-10, 12-20, and 22-33 are pending in the present application. Claims 2, 12 and 22 have been amended herewith. Entry of this amendment after final is requested as placing this case in condition for allowance or better form for appeal. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 112, Second Paragraph

The Examiner rejected Claims 2, 12, and 22 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

Request to Withdraw Final Rejection as being Premature

Applicants request that the finality of the rejection of Claims 2, 12, and 22 under 35 U.S.C. § 112, second paragraph be withdrawn as being premature. Per M.P.E.P. 706.07(a), second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement. Applicants urge that the Examiner has introduced in this most recent Office Action (dated June 5, 2006) a new ground of rejection for Claims 2, 12 and 22 which was not necessitated by amendment or IDS submission. These claims were not amended in the Response to Office Action filed on March 14, 2006, and yet these unamended claims are now subject to a new ground of rejection (35 U.S.C. § 112, second paragraph) in the present Office Action dated June 5, 2006. Hence, the finality of the rejection of at least Claims 2, 12 and 22 is shown to be premature, and Applicants thus request withdrawal of this *premature final rejection*.

In addition, Applicants request entry of this amendment after final, to address this premature 35 U.S.C. § 112, second paragraph rejection, in order to place this case in condition for allowance or better form for appeal.

Therefore, the rejection of Claims 2, 12, and 22 under 35 U.S.C. § 112, second paragraph has been overcome.

II. 35 U.S.C. § 103, Obviousness

The Examiner rejected Claims 2-10, 12-20, and 22-33 under 35 U.S.C. § 103 as being unpatentable over Neches et al. (US004925311) and in view of Blumenau (US006018779A). This rejection is respectfully traversed.

Claim 2 expressly recites the claimed feature of “encapsulating a first one of said plurality of commands *in a first process* and encapsulating a second one of said plurality of commands *in a second process*” (emphasis added). The first (encapsulated) command is executed in response to the first process execution, followed by execution of the second process (in response to completion of processing the first process). As can be seen, a first command is encapsulated in a first process and a second command is encapsulated in a second process, with such processes being executed sequentially. The cited Blumenau reference, which is being used as teaching this claimed feature, teaches that a plurality of commands are encapsulated into a single command (see, e.g., Blumenau’s Abstract). Such reference does not teach or suggest multiple processes – each with an encapsulated command - being sequentially executed. To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974). Blumenau expressly states that a plurality of commands are encapsulated in a single command in order to reduce processing time, and in particular to reduce processing overhead associated with arbitration that is required when executing a command across a SCSI bus (col. 2, lines 21-31). The fact that a prior art device could be modified so as to produce the claimed device is not a basis for an obviousness rejection unless the prior art suggested the desirability of such a modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The cited art provides no such suggestion of any desire for modifying such teachings in accordance with the features of Claim 2. Further, a person of ordinary skill in the art, when confronted with the teachings of Blumenau, would *not* have been motivated to modify such teachings in accordance with the features of Claim 2, as such a modification would adversely affect system performance due to the increased processing overhead that would result if individual, single commands were each inserted in a separate process. The cited Blumenau reference expressly teaches a desire to reduce processing overhead associated with arbitration that is required when executing a command across a SCSI bus (col. 2, lines 21-31), and accomplishes this by conglomerating a plurality of commands into a single command which is sent across a bus. The entire, expressed purpose of Blumenau – to reduce overhead arbitration associated with processing individual commands – would be defeated if only single commands were sent across the SCSI bus at a time (with their associated arbitration overhead), and in fact this single command encapsulation would itself introduce additional processing (the additional processing being the encapsulation of a single command within a single command) without any associated benefit. Thus, a person of ordinary skill in the art would not have been motivated to modify the teachings of Blumenau in accordance with the features recited in Claim 2. This further evidences that the only motivation to modify the teachings of the cited references in accordance with present invention must be coming from the present invention itself, which is improper hindsight analysis.

Further, the cited Neches reference is keen on *reducing overhead* associated with a multi-processor system (col. 1, lines 10-19; col. 2, lines 41-45; col. 9, lines 54-58), and thus a person of ordinary skill in the art would not have been motivated to modify the Neches' teachings to include *additionally processing overhead* that is required to encapsulate commands in different processes for sequential execution thereof. Although a device may be capable of being modified to run the way [the patent applicant's] apparatus is claimed, there must be a suggestion or motivation *in the reference* to do so. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). There is simply no suggestion or other motivation per the teachings of Neches to modify such teachings to include the claimed command encapsulation technique, due to Neches desire to streamline processing in a multi-processing environment (col. 2, lines 37-53).

Still further, the plurality of commands that are encapsulated by Blumenau into a single command are *not* selected from an environment in which these commands execute concurrently. Rather, due to the SCSI protocol, the commands are selected from an environment in which the commands must execute in a particular order in order to adhere to the SCSI protocol definition – which defines a very specific command execution sequencing. In contrast, and per the features of Claim 2, each of the commands (which are individually encapsulated into separate processes for sequential execution) is *selected* “from the environment which *executes commands concurrently*”. Thus, it is further urged that Claim 2 is not obvious in view of the cited references, as the Blumenau commands selected for encapsulation (within a single command) are not selected from an environment which executes such commands concurrently.

Applicants traverse the rejection of Claims 12 and 22 for similar reasons to those given above with respect to Claim 2.

Applicants initially traverse the rejection of Claims 3-10, 13-20 and 23-33 for reasons given above with respect to Claim 12, and further traverse the rejection of such claims for reasons given in the previous Office Action dated March 14, 2006.

Further with respect to Claim 31 (and similarly for Claims 32 and 33), it is urged that none of the cited references teach or suggest the claimed feature of “wherein said first process and said second process are included in a script”. The features of Claim 31 advantageously provide an ability to ensure that commands will execute sequentially – where a first command will complete executing before beginning the execution of the next command – in a computer environment where such commands would otherwise execute concurrently with no regard to command ordering, by placing each of the command-embedded processes in a script in order to schedule proper command execution sequencing (Specification page 3, lines 3-21; page 10, line 29 – page 11, line 8).

In rejecting Claim 31, the Examiner cites Neches' teachings at col. 3, line 36 – col. 4, line 40 and col. 8, line 36 – col. 9, line 21, and col. 9, lines 46-58. Applicants have reviewed these passages

extensively, and there is no mention of any type of script, and therefore it necessarily follows that there is no teaching or suggestion of a first process and a second process – *each with an encapsulated command* selected from an environment in which the commands execute concurrently - that are included in a script. The Examiner also cited Blumenau's teaching at col. 1, line 41- col. 2, line 34 as teaching the features recited in Claim 31. Applicants have reviewed these passages extensively, and there is no mention of any type of script. Thus, Claims 31-33 are further shown to not be obvious in view of the cited references, as there are additional claimed features not taught or suggested by the cited references.

Therefore, the rejection of Claims 2-10, 12-20, and 22-33 under 35 U.S.C. § 103 has been overcome.

III. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

/Wayne P. Bailey/

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